

19-5605
No.

ORIGINAL

FILED

AUG 12 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

STEPHEN ALAN MACOMBER — PETITIONER
(Your Name)

vs.

STATE OF KANSAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF KANSAS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

STEPHEN ALAN MACOMBER #44362
(Your Name)

P.O. Box 311 - El Dorado Con. Facility
(Address)

El Dorado, KS 67042
(City, State, Zip Code)

Not Applicable
(Phone Number)

QUESTION(S) PRESENTED

1. DID THE TRIAL COURT'S FAILURE TO GIVE A SPECIFIC USE-OF-DEADLY-FORCE PRESUMPTION INSTRUCTION LOWER THE BURDEN OF PROOF FOR THE STATE AND VIOLATE MACOMBER'S RIGHT TO DUE PROCESS AND A FAIR TRIAL GUARANTEED BY THE FOURTEENTH AND SIXTH AMENDMENTS TO THE UNITED STATES CONSTITUTION?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**: KANSAS Supreme Court

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the KANSAS ~~Supreme~~ Court of Appeals court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was May 17, 2019.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Constitution, Amendment VI: Right to Fair Trial
2. US Constitution, Amendment XIV: Right to Due Process;
AND Application of the SIXTH AMENDMENT TO THE STATES.
3. K.S.A. 21-5224 USE OF FORCE presumption Regarding
an occupied vehicle (which in relevant part states):

(a) "... a person is presumed to have a reasonable belief that deadly force is necessary to prevent imminent death or great bodily harm to such person or another person if:

(1) The person against whom the force is used, at the time the force is used:

(A) Is unlawfully or forcibly entering or has unlawfully or forcibly entered, and is present within the ... occupied vehicle of the person using force."

STATEMENT OF THE CASE

The petitioner's case is criminal in nature. On June 7, 2010 Macomber shot and killed Ryan Lofton. At trial, the petitioner's theory was self-defense for which the trial court generally instructed the jury. However, the defense theory was that Macomber was in an occupied vehicle, and at the time he shot Mr. Lofton was simultaneous to Lofton reaching in his car and trying to grab the petitioner's gun.

The trial court refused to give the additional specific Self-Defense presumption instruction and the jury convicted the petitioner of Involuntary Manslaughter.

At subsequent appeals both the Kansas Court of Appeals and Kansas Supreme Court have held that any error in the trial court's failure to give this instruction is harmless - under state law review standards.

REASONS FOR GRANTING THE PETITION

1. A specific use-of-force presumption instruction implies a constitutional violation of due process and a fair trial. It is of National importance because of the frequency that self-defense laws are invoked and that such errors are handled differently in other jurisdictions.

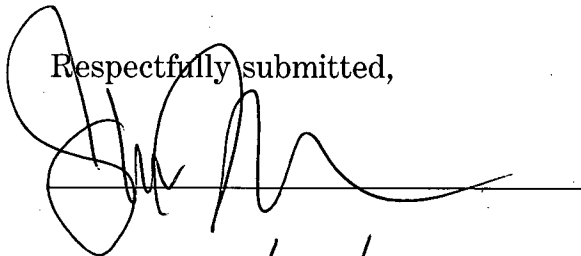
Here, the specific instruction to a jury that if certain predicate facts are believed to be true then Macomber's actions should be presumed reasonable go directly to the Burden of proof, by not giving the requested instruction allowed the trial judge to invade the province of the jury and essentially lowered the Burden for the State of Kansas to prove that the petitioner did not act in self defense beyond a reasonable doubt.

See *Mathews v. United States* 485 US 58, 63 (1988): (as a general proposition a defendant is entitled to an instruction as to any recognized defense); *California v. Trombello* 467 US 479, 485 (1984): (Criminal Defendants must be afforded a meaningful opportunity to present a complete defense); *Barker v. Welford* 199 F.3d 867, 875-76 (6th Cir 1999) (Granting habeas relief under AEDPA because of failing to give specific self-defense instruction).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a series of loops and a long horizontal stroke.

Date:

08/08/2019